

E-Filed 5/18/06

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

WAYNE THOMPSON,

Plaintiff,

V.

JO ANNE B. BARNHART, Commissioner of
Social Security,

Defendant.

Case Number C 04-3960 JF

**ORDER DISMISSING ACTION
WITHOUT PREJUDICE FOR
FAILURE TO PROSECUTE**

Plaintiff, proceeding *pro se*, commenced this action on September 20, 2004. Defendant answered on February 4, 2005. At some point, Plaintiff apparently retained counsel, who entered into a stipulation with counsel for Defendant for an extension of time to file Plaintiff's motion for summary judgment. However, that stipulation was not filed with the Court due to a clerical oversight. When no motion was filed, the Court issued an Order to Show Cause why the case should not be dismissed and set a hearing on May 27, 2005. However, because Plaintiff's counsel has not yet filed a substitution of counsel, he was not given notice. Neither side appeared and the Court dismissed the case.

Plaintiff's counsel subsequently moved to set aside the dismissal, reopen the case and extend time to file a motion for summary judgment. That motion was granted on July 12, 2005.

1 However, nothing further was filed for several months. On November 10, 2005, the Court issued
2 an Order to Show Cause why the action should not be dismissed for failure to prosecute.
3 Plaintiff did not respond to the Order to Show Cause.

4 On March 28, 2006, Plaintiff filed with the Court a copy of a letter he apparently had sent
5 to his attorney on March 28, 2006. The letter indicates that Plaintiff's counsel has not been
6 communicating with Plaintiff or pursuing the action.

7 In light of Plaintiff's failure to move this action forward for more than a year, and failure
8 to respond to the Order to Show Cause, the action is hereby DISMISSED WITHOUT
9 PREJUDICE for failure to prosecute.

10 IT IS SO ORDERED.

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14 DATED: 5/18/06



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16 JEREMY FOGEL
United States District Judge

1 This Order was served on the following persons:

2 Counsel for Plaintiff:

3 Geoffrey W. Rawlings
4 586 North First Street, Suite 101
San Jose, CA 95112

5 Plaintiff:¹

6 Wayne Thompson
7 828 Riverside Ave, #C
Santa Cruz, CA 95062

8 Counsel for Defendant:

9 Elizabeth Firer Elizabeth.Firer@ssa.gov

10 Joann M. Swanson joann.swanson@usdoj.gov

11 Sara Winslow sara.winslow@usdoj.gov, kathy.terry@usdoj.gov; claire.muller@usdoj.gov

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¹ Because Mr. Rawlings apparently is not actively litigating this case, the Court is serving Plaintiff with this order as well as Mr. Rawlings.